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21ST HOLDINGS, LLC, and
PAUL KIRKMAN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

VFD CONSULTING, INC,

Plaintiff,

v.

21st SERVICES, 21st HOLDINGS, LLC, PAUL KIRKMAN, and DOES 1 through 5, inclusive,

Defendants.

No. C 04-2161 SBA

DEFENDANT 21st SERVICES' MOTION TO OVERRULE OBJECTIONS AND TO COMPEL FURTHER RESPONSES TO INTERROGATORIES, SET ONE, AND REQUEST FOR PRODUCTION, SET ONE

Date: June 1, 2005
Time: 10:30 a.m.
Location: Courtroom C, 15th Floor
Judge: Hon. Mag. Judge Edward M. Chen
Trial Date: April 24, 2006

Complaint Filed: June 4, 2004

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I. NOTICE OF MOTION

Defendants 21st Services, 21st Holdings, LLC, and Paul Kirkman ("Defendants" or "21st Services"), respectfully submit the following Motion to Compel Further Responses To 21st Services' Interrogatories, Set One and Request for Production, Set One which is set for hearing on June 1, 2005, at 10:30 a.m. in Courtroom C, Floor 15, before the Honorable Magistrate Judge Edward M. Chen.

II. RELIEF SOUGHT BY THIS MOTION AND STATEMENT OF ISSUES TO BE DECIDED

Despite repeated efforts to meet and confer, Plaintiff VFD Consulting, Inc. ("Plaintiff" or "VFD") has provided only evasive and incomplete responses to certain of Defendants' Interrogatories to Plaintiffs, Set One and Request for Production, Set One. Defendants now seek an order overruling Plaintiff's objections and compelling Plaintiff to correct deficiencies in its responses and provide full and complete responses to Interrogatory Nos. 3, 4, 8, 10, 11, 13, 15, 16, and 17 as well as Request for Production Nos. 11, 12, and 13.

Each of the enumerated requests seek information regarding the core allegations Plaintiff is making in this case. These discovery requests seek basic information about essential topics that include:

- The manner in which Plaintiff's damages are calculated and supporting documents
- Facts and witnesses that support Plaintiff's Misappropriation of Trade Secret Claims
- Facts and witnesses that support Plaintiff's Conversion Claims
- Facts and witnesses that support Plaintiff's Fraud Claims
- Documents that Plaintiff gathered during the course of its work for Defendants

As such, Defendants require full and complete responses immediately so that they may evaluate Plaintiff's allegations and identify potential sources of admissible evidence. Additionally, proper responses are necessary so that Defendants may adequately prepare for further discovery such as the depositions of VFD and other witnesses.

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III. STATEMENT OF RELEVANT FACTS

A. Background

Defendants and VFD entered into a contract dated August 18, 1998 whereby VFD would conduct research for the benefit of and at the direction of 21st Services. Once VFD assembled the research, 21st Services combined the data provided by VFD with the work of other independent contractors. This collective information was assembled to form what is known as the "MedDiag" system. The MedDiag system is used by Defendants to provide objective life expectancy calculations for the life settlement industry[1].

In addition to the initial research performed by VFD, VFD was also to be available for additional consulting work on an as-needed basis. Therefore, the contract between the parties contemplated a 3-year independent contractor relationship. The agreement was signed in August of 1998, and by its own terms would expire in August of 2001. During this 3-year period, VFD received payments of $33 for each elder life expectancy calculation performed using the MedDiag system.

Although the agreement expired in August of 2001, due to an oversight, 21st Services continued to pay VFD until October 2003. When 21st Services discovered its error, it attempted to negotiate a new contract with VFD. However, these negotiations were unsuccessful. In January of 2004, 21st Services stopped making payments to VFD. In response, Plaintiff filed this action alleging damages based on causes of action for Breach of Contract, Fraud, Negligence, Misappropriation and Conversion. (*See Sabnis Decl.*, Ex. A).

VFD claims that the data provided to 21st Services pursuant to the contract is a trade secret and that VFD thereby holds a continuing interest in the MedDiag system. (*Id.*, Ex. A 15:9-20). VFD also alleges that Defendants converted and misappropriated the alleged trade secret and negligently allowed it to be disclosed to third parties. (*Id.*, Ex. A 12:21-15:8, 16:20-18:21). Further, VFD claims that Defendants committed fraud by inducing VFD to continue to allow Defendants to use the

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[1] Life settlements allow life insurance policy holders the option of selling their policies to viatical settlement providers that will pay the policy holder an amount greater than the cash surrender value of the policy. As part of their business, Defendants provide life expectancy calculations to these viatical settlement providers. The calculations predict the life expectancy of the policy owner.

MedDiag system and by misrepresenting the accuracy of the MedDiag system. (*Id.*, Ex. 8:8-12:20). VFD bases its allegations of fraud on certain statements made to it by agents of Coventry First, LLC and other third parties. (*Id.*, Ex. A 10:1-18).

B. Defendants' Good-Faith Efforts To Informally Resolve The Issues Now Before The Court/Compliance with Fed. R. Civ. P. 37(2)(A) and Civil L.R. 37-1

Defendants served Plaintiff with Interrogatories, Set One and Request for Production, Set Two on December 30, 2004. (*Id.*, Ex. B, C). Plaintiff served responses to both sets of discovery on February 7, 2004. (*Id.*, Ex. D, E).

The following outlines Defendants' attempts to meet and confer with Plaintiffs regarding deficiencies in Plaintiffs' responses during the two and one-half months prior to the filing of this Motion:

On February 11, 2005, counsel for Defendants sent a letter to Plaintiffs outlining the deficiencies in Plaintiff's responses to Defendants' interrogatories and request for production and detailing why the responses were evasive and incomplete pursuant to Rule 37(a)(3) and 33(b)(1). The letter addressed the majority of the responses and also objected to each and every response because all responses were unverified. The letter requested that Plaintiff provide amended responses by February 24, 2005. It also requested that a face to face meet and confer regarding the responses take place on February 16, 2005. (*Id.*, Ex. F).

On February 17, 2005, counsel for Defendants sent a letter to Plaintiffs requesting that counsel meet in person on either February 22, 23, or 28 to discuss the issues surrounding Plaintiff's deficient responses. (*Id.*, Ex. G). On February 22, 2005, Defendants sent Plaintiff a letter confirming an agreement between the parties that a face to face meet and confer session concerning Plaintiff's responses to Defendant's discovery requests would occur on February 28, 2005. (*Id.*, Ex. H).

Defendants and Plaintiff met on February 28, 2005 to meet and confer regarding Plaintiff's discovery responses. As a result of the meeting, it was agreed upon by Plaintiff's counsel that Plaintiff would provide supplemental/amended responses to Defendants' discovery requests by 5:00 p.m. on March 22, 2005. Pursuant to the agreement, the responses were to take into account the objections raised in Defendants' February 11, 2005 meet and confer letter and were to be more detailed in that they would provide information beyond references to Plaintiff's initial disclosures and documents produced therein. Counsel for Defendant sent a letter dated February 28, 2005 to Plaintiff's counsel summarizing the agreement. (*Id.*, Ex. I).

As of March 22, 2005, Plaintiff had not served amended responses pursuant to the agreement reached at the face to face meet and confer session. Upon being contacted by counsel for Defendants regarding the responses, Plaintiff's attorney requested an extension for serving the responses until March 30, 2005. Defendant granted the extension. (*Id.*, Ex. L).

Plaintiff served amended responses to Defendants' Interrogatories, Set One and Request for Production, Set One on March 30, 2005. (*Id.*, Ex. J, K).

On April 4, 2005, counsel for Defendant sent a letter to Plaintiff identifying those responses that remained evasive and incomplete under Fed. R. Civ. P. 37(a)(3) and 33(b)(1). The particular responses identified in the letter were Interrogatories Nos. 3, 4, 8, 10, 11, 13, 15, 16, and 17 and Request for Production Nos. 11, 12, and 13. Defendant also objected to the responses because they remained unverified. (*Id.*, Ex. L).

On April 5, 2005, counsel for Plaintiff agreed to provide supplemental responses to Defendants' Interrogatories, Set One and Request for Production, Set One by April 20, 2005. As of April 22, 2005, Plaintiff had not served amended/supplemental responses as previously agreed. (*Id.*, Ex. M).

On April 22, 2005, counsel for Defendant placed a telephone to counsel for Plaintiff regarding Plaintiff's failure to provide further responses to Defendants' discovery requests as previously agreed. Counsel for Plaintiff stated that no further responses would be provided. (*Id.* at ¶15).

On April 25, 2005, counsel for Defendants again placed a telephone call to counsel for Plaintiff with regard to the fact that Plaintiff had not yet verified Plaintiff's responses to Defendants' Interrogatories, Set One and Request for Production, Set One. (*Id.*).

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IV. ARGUMENT

A party may move for an order compelling discovery when a responding party fails to answer an interrogatory submitted under Rule 33 or a response to a request for inspection or production pursuant to Rule 34. Fed. R. Civ. P. 37(a)(2)(B). An answer or response to a discovery request that is evasive or incomplete is to be treated as a failure to respond. Fed. R. Civ. P. 37(a)(3). If a party provides an incomplete or evasive response, the Court, upon the motion of the demanding party, has authority to issue an order compelling a full and complete response and precluding the violating party from offering evidence on the subject matter of the order if there is no compliance. Fed. R. Civ. P. 37(a) and (b).

In the Northern District of California, the party moving for an order compelling discovery responses is required to comply with the proportionality requirements of Federal Rule of Civil Procedure 26(b)(2). Civ. L.R. 37-2. Thus, in addition to showing the discovery sought is relevant to a claim or defense of any party, the movant must also demonstrate that the discovery sought satisfies the "common sense test." In Re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 331 (N.D. Cal. 1985) citing Fed. R. Civ. P. 26 (b)(2).

The "common sense/proportionality" test is met when, after taking into account all the circumstances concerning the discovery request, the benefit derived from compelling the discovery is greater than the burden imposed in requiring the responding party to comply. In Re Convergent Technologies Securities Litigation, 108 F.R.D. at 331. Factors taken into account when making this analysis include: whether the timing of the request is sensible, the potential significance of the information sought and the burden and cost on the target of the request. *Id.*

A. Plaintiff Should Be Compelled To Provide Full And Complete Responses To 21st Services' Interrogatories And Request for Production and Plaintiff's Baseless Objections Should Be Overruled

Defendant now sets forth why it is entitled to full and complete responses as well as demonstrating that the proportionality requirements are satisfied with respect to Interrogatory Nos. 3, 4, 8, 10, 11, 13, 15, 16, and 17 and Request for Production Nos. 11, 12, and 13.[2] The

[2] Each question posed by Defendants and the corresponding answer provided by Plaintiff is set forth in compliance with Civ. L.R. 37-2 in Defendants' Separate Statement of Interrogatories and Request for Production.

deficiencies in each response and each improper objection is also set forth and discussed.

1. Interrogatory No. 3 Regarding Plaintiff's Prior Claims Of Property Interest Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 3 seeks information regarding Plaintiff's customers, the nature of its relationships with these customers, and whether Plaintiff is claiming an ownership interest in the final product of any work performed. *(Defendants' Separate Statement of Interrogatories and Request for Production ("SS")* 2:14-24). 21st Services is entitled to this information because it is directly relevant to Plaintiff's allegation that 21st Services misappropriated a trade secret owned by Plaintiff resulting from Plaintiff's work for Defendants. 21st Services claims that Plaintiff has no intellectual property interest in any work it performed and that Plaintiff has brought this suit merely to damage 21st Services. Therefore, 21st Services is entitled to know whether Plaintiff has ever claimed a similar proprietary interest during the course of similar work Plaintiff has performed for similarly situated clients. For example, if Plaintiff has never claimed an intellectual property interest in research it performed for other life expectancy providers, it is directly relevant to Plaintiff's contention that VFD holds a trade secret in the work it performed for Defendants.

Plaintiff's supplemental response to Interrogatory No. 3 provides only a list of VFD's customers pursuant to subpart (a). *(SS 2:25-4:18)*. The response is evasive and incomplete under Rule 37 (a) (3) because it completely fails to provide a response to subparts (b) and (f) of the interrogatory. However, as requested by these subparts, whether Plaintiff's other consulting relationships conferred ownership rights or some other type of property interest onto VFD and the nature of these relationships are directly relevant to the instant action.

Plaintiff should be required to provide full and complete responses to subparts (b) and (f) of this interrogatory. Plaintiff possesses this information and 21st Services does not. Plaintiff can therefore easily obtain and compile this information. Additionally, this is an appropriate time in the litigation for 21st Services to obtain the requested discovery. Defendant requires information regarding any similar interest claimed by Plaintiff and the identity of persons/entities that Plaintiff contracted with to obtain such an interest. Defendants will require time to locate and possibly depose these persons. If Plaintiff is not required to provide the information requested, Defendants will face a heavy burden in attempting to obtain information regarding Plaintiff's other customers. The expense and time required to pursue this objective and obtain relevant information regarding VFD's customers can be easily avoided simply by requiring Plaintiff to provide full and complete answers. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Because of the relevance of the information sought by Interrogatory No. 3 to Plaintiff's claims, Plaintiff's objections to this Interrogatory are baseless and should be overruled. First, the nature of the information sought renders frivolous Plaintiff's objection that this interrogatory is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Second, Plaintiffs objection that this request is overly broad and unduly burdensome should be overruled. "[T]o support an objection based upon burdensomeness[,] the objecting party must particularize the basis for the objections as generalized assertions are inadequate." Nagele v. Electronic Data Systems Corp., 193 F.R.D. 94, 109 (W.D.N.Y. 2000). Plaintiffs have provided no basis supporting their generalized assertion that this interrogatory is overbroad. Additionally, this interrogatory is not overbroad because it seeks information directly relevant to the specific nature of Plaintiff's relationship with each of its customers. All such information is required by 21st Services to determine if each customer was or was not similarly situated to 21st Services.

Third, Plaintiff's objection that this request seeks to discover Plaintiff's confidential financial affairs pursuant to Cobb v. Superior Court, 99 Cal. App. 3d 543, 550 (1979) and Valley Bank of Nevada v. Superior Court, 15 Cal. 3d 652, 658 (1975) is without merit. These cases do not support Plaintiff's argument that the discovery Defendants seek is not permissible. The Cobb case limits discovery only in specific situations when a party's net worth is not discoverable. 21st Services does not seek information regarding Plaintiff's net worth.

The Valley Bank case stands for the proposition that banks should provide notice to account holders prior to producing financial records pursuant to a subpoena. This case does not support Plaintiff's contention that this interrogatory should not be fully and completely answered.

2. Interrogatory No. 4 Regarding Plaintiff's Claim For Damages Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 4 seeks information regarding how Plaintiff's claim for damages has been calculated and requests the identity of those persons who made the calculations. *(SS 4:19-25)*. 21st Services is entitled to learn how Plaintiff calculated its alleged damages to better allow it to evaluate Plaintiff's claims and learn how Plaintiff has been damaged. Defendants claim that Plaintiff has suffered no damage. For example, Defendant should be able to determine if VFD is claiming that it should be compensated for the current use of MedDiag or whether damages were calculated for a fixed period of time that has already occurred. This will allow Defendants to learn the boundaries of Plaintiff's claims. This is an appropriate time in this litigation to obtain this material as Plaintiff's Complaint indicates that it has acquired adequate information to make damage estimates. *(Sabnis Dec., Ex. A)*. Further, this information is readily available to Plaintiff's and not available to 21st Services. The potential burden imposed on Defendants to obtain this information independently will severely hinder its ability to assess the true nature and boundaries of Plaintiff's claims.

Plaintiff's supplemental response to Interrogatory No. 4 is evasive under Rule 37(a)(3) because it represents that it "will supplement its response in accordance with federal rules." *(SS 4:26-5:14)*. This improperly implies that Plaintiff has not completed adequate discovery to provide a response. Plaintiff is also alleging that it has been damaged in the amount of $33 per use of the MedDiag system, less payments actually received. Common sense dictates that it is Plaintiff who is in possession of the full amount of payments actually received—these are payments received by Plaintiff and it is therefore Plaintiff who possesses this information. Plaintiff's evasive and incomplete response is further compounded by the reference to "other damages" that will require further discovery to calculate. Plaintiffs should be compelled to amend its responses to provide how Plaintiff's damages have been calculated and provide the identity of those individuals who have participated in the calculations. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's supplemental response is also evasive and incomplete because it improperly asserts the attorney-client and work product privileges. Fed. R. Civ. P. 26(b)(5) requires that a party asserting the attorney client privilege describe the nature of the information withheld in a manner that allows the requesting party to assess the applicability of the privilege. Plaintiff's answer merely asserts the privileges without describing the nature of the information Plaintiff is withholding. Importantly, nowhere in the response does Plaintiff actually state that it has hired any consultant to calculate damages whose identity may be protected from disclosure. Instead, the response states only a general rule. Plaintiff's response clearly does not satisfy the requirements of the applicable federal rule and the claims of privilege should be overruled.

3. Interrogatory No. 8 Regarding Plaintiff's Cause Of Action For Fraud Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 8 seeks all facts, documents, and tangible things and /or witnesses that support Plaintiff's claims contained within Count II of Plaintiff's Complaint. *(SS 5:15-18)*. This Count sets forth Plaintiff's causes of action for fraud. 21st Services is entitled to the requested information because it is discoverable under Rule 26(b)(1) and relates directly to the Counts contained within Plaintiff's Complaint. Plaintiff's cause of action for fraud is based on statements made to it during conversations between Plaintiff and various third parties. Since it is Plaintiff's principle that had the conversations, common sense dictates that Plaintiff provide the particulars of each discussion that supports the fraud claim.

The information requested is readily available to Plaintiffs and not available to 21st Services. The burden that would be imposed on Defendants to independently obtain information regarding the conversations could be easily remedied by an order instructing Plaintiff to provide all facts, documents, and things in its possession regarding the fraud claim. It is an appropriate time for Defendants to seek this information because the information requested is basic and at the heart of Plaintiff's allegations. Defendants also require the requested information so that they can identify any documents or persons that may provide further information regarding the fraud claim.

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Plaintiff's supplemental responses outline only vague contentions of fraudulent conduct and provide no further details. *(SS 5:19-28)*. "In California, fraud must be pled specifically; general and conclusory allegations do not suffice . . .[t]hus the policy of liberal construction of the pleadings ... will not ordinarily be invoked . . .[t]his particularity requirement necessitates pleading facts which "show how, when, where, to whom, and by what means the representations were tendered." Murphy v. BDO Seidman, 113 Cal. App. 4th 687, 774 (2003), citing Lazar v. Superior Court, 12 Cal. 4th 631, 645 (1996).

Allegation #1 of Plaintiff's supplemental response states that "Paul Kirkman made false representations to Vera Dolan of VFD during contract negotiations, which concerned Coventry Financial", but contains no specifics about the substance of the false representations or the manner in which they were communicated and/or relied upon.

Allegation #2 states that "21st Services failed to inform VFD that MedDiag required maintenance and mislead VFD about the nature of the system's maintenance status", but contains no further in formation, including which person(s) at 21st Services communicated this information and what the specifics of the information actually were.

Allegation #3 states that "21st Services mislead VFD in an attempt to induce VFD to sign a contract under terms that were disadvantageous to VFD", but contains no specifics about who at 21st Services was involved in this conduct, how it happened and/or even identifies the alleged disadvantageous terms. Plaintiff should be compelled to supplement its responses such that, at the least, Plaintiff meets the particularity requirements for pleading a cause of action for fraud. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's objections to this Interrogatory should be overruled because the objections are baseless. First, Plaintiff objects on the grounds that this request is vague, ambiguous, and overly broad. "The party objecting to discovery as vague and ambiguous has the burden to show such vagueness or ambiguity." Pulsecard, Inc. v. Discover Card Services, Inc., 168 F.R.D. 295, 310 (D. Kansas 1996). Plaintiff states no reason supporting its objections of vagueness and ambiguity. In addition, this Interrogatory is not overly broad because it specifically seeks information regarding Plaintiff's fraud claim.

Second, Plaintiff's objections based on the attorney-client and work product privileges should be overruled because they do not contain the required specificity. Fed R. Civ. P. 26(b)(5). Asserting a blanket privilege objection is improper. Eureka Financial Corporation v. Hartford Accident and Indemnity Company, 136 F.R.D. 179, 182 (E.D.Cal. 1991). An attorney-client privilege or work-product privilege assertion "must be express and 'describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.'" Equal Employment Opportunity Commission v. Safeway Store, Inc., 2002 U.S. Dist. LEXIS 25200 1, 2 (N.D. Cal. 2002). Such a description includes providing the date of the document, the name of its author, the names of its recipients, the names of all people given copies of the document, the subject of the document, the privileges asserted, and, where necessary, competent evidence to substantiate a claim of privilege. *Id.* at 3.

Because Plaintiffs have not specified the basis for the privilege objections they should be overruled. Additionally, to the extent this request seeks the identification of documents; there is no basis for a privilege objection. In order to preserve their claim of privilege, Plaintiffs are actually *required* to identify allegedly privileged documents. See Eureka *supra,* 136 F.R.D. at 182.

4. Interrogatory No. 10 Regarding Plaintiff's Cause Of Action For Misappropriation of Trade Secret Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 10 seeks information regarding all facts, documents, and tangible things and /or witnesses that support Plaintiff's claims contained within Counts IV of Plaintiff's Complaint. *(SS 6:1-7)*. Count IV sets forth Defendants cause of action that 21st Services misappropriated a trade secret. 21st Services is entitled to the requested information because the information requested is discoverable under Rule 26(b)(1) and relates directly to the Counts contained within Plaintiff's Complaint. Plaintiff's cause of action for misappropriation is based on facts held by Plaintiff that cause it to believe that the work it performed for Defendants constituted a trade secret. Further, this information is readily available to Plaintiffs and not available to 21st Services since Plaintiff is alleged to have had possession of the trade secret and should be able to define the alleged trade secret. In contrast, the burden that would be imposed on Defendants to independently obtain this information would be undue. It is an appropriate time for Defendants to seek this information because the information requested is basic and at the core of Plaintiff's allegations. Defendants also require the requested information so that they can identify any documents or persons that can provide further information regarding the trade secret claim.

Plaintiff's supplemental response is evasive and incomplete because it contains no allegations against Defendants. *(SS 6:8-19)*. Whether VFD allegedly took reasonable precautions to keep certain information confidential has nothing whatsoever to do with how Defendants allegedly misappropriated a trade secret. In order to support a claim for misappropriation of a trade secret, a party must, as an initial step, identify the trade secret with "sufficient particularity to separate it from matters of general knowledge in the trade, and to permit defendant to ascertain as least the boundaries within which the secret lies." Diodes, Inc. v. Franzen, 260 Cal. App. 244, 253 (Cal. App. 1968). Plaintiff identifies no facts supporting its claim that the work it performed for 21st Services constitutes a trade secret.

Further, Plaintiff's reference to the supplemental response to Interrogatory No. 9 is improper for several reasons. First, an answer to an interrogatory must be responsive to the question and should be complete in itself. It should not refer to the pleadings or other documents. Scaife v. Boenne, 191 F.R.D. 590, 594 (2000). Second, the reference to this Interrogatory is improper because the subject matter of Interrogatory No. 9 concerns Plaintiff's cause of action for Negligence. Since Plaintiff separately alleges that Defendants misappropriated a trade secret, it is required to provide all information which supports this specific claim. If no information currently exists, Plaintiff must so state in a verified response. Accordingly, Plaintiff should be required to supplement this response. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's objections to this interrogatory should be overruled because the objections are baseless. The reasons why these objections should be overruled are identical to those set forth for Interrogatory No. 8 above.

5. Interrogatory No. 11 Regarding Plaintiff's Cause Of Action For Conversion Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 11 seeks information regarding all facts, documents, and tangible things and /or witnesses that support Plaintiff's claims contained within Count V of Plaintiff's Complaint. *(SS: 6:20-23)*. Count V sets forth Plaintiff's cause of action based on a theory of conversion. 21st Services is entitled to the requested information because it is discoverable under Rule 26(b)(1) and relates directly to the Counts contained within Plaintiff's Complaint. Plaintiff is in possession of the information requested by this Interrogatory as Plaintiff has verified the Complaint setting forth allegations regarding the Conversion claim. It is an appropriate time for Defendants to seek this information because the information requested is basic and at the heart of Plaintiff's allegations. Defendants also require the requested information so that they can identify any documents or persons that can provide further information regarding the conversion claim.

Plaintiff's supplemental response is evasive and incomplete because it contains no facts supporting the allegations of conversion against Defendants. *(SS 6:24-7:1)*. In order to establish conversion, Plaintiff must show an exercise of dominion over property inconsistent with the owner's rights. In re: Bailey v. Albion, 197 F.3d 997, 1000 (9th Cir. 1999). Plaintiff identifies no such facts. Additionally, Plaintiff's reference to its supplemental response to Interrogatory No. 7 is improper for several reasons. First, an answer to an interrogatory must be responsive to the question and should be complete in itself. It should not refer to the pleadings or other documents. Scaife v. Boenne, 191 F.R.D. 590, 594 (2000). Second, the reference to this interrogatory is improper because the subject matter of Interrogatory No. 7 concerns Plaintiff's cause of action for Breach of Contract. Since Plaintiff separately alleges conversion, it is required to provide all information which supports this specific claim. If no information currently exists, Plaintiff must so state in a verified response. Accordingly, Plaintiff should be compelled to supplement this response and disclose any and all information regarding its claim for conversion. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's objections to this Interrogatory should be overruled because the objections are baseless. The reasons why these objections should be overruled are identical to those set forth for Interrogatory No. 8 and 10 above.

6. Interrogatory No. 13 Regarding Plaintiff's Property Interests Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 13 seeks the identity of all entities and other delineated organizations in which Vera Dolan enjoyed a property interest or was a common shareholder within the past ten years. *(SS 7:2-14)*. The request also asks Plaintiff to identify the custodian of records for each entity, the amount of shares Vera Dolan owns, and the nature of Vera Dolan's interest along with other information identifying the entity.

21st Services is entitled to the requested information because it may lead to admissible evidence regarding Plaintiff's claim that it holds a proprietary interest in the work it performed that was incorporated by 21st Services into the MedDiag system. The requested information will demonstrate whether any other entity provided Vera Dolan with a property interest or ownership rights in the entity for her work. This is directly relevant to Plaintiff's claim that she holds a past and continuing property interest in the MedDiag system. For example, if Plaintiff has not been granted an ownership interest as a result of its work for other organizations, it is less likely that Plaintiff ever expected to have a continuing interest and right to payments for use of the MedDiag system. Plaintiff is clearly in possession of whether or not Vera Dolan has any interest in the specified organizations. With respect to Plaintiff, this is not information that must be obtained from third parties. In contrast, 21st Services will bear a heavy burden in attempting to determine the existence of an ownership interest, if any, that has been granted to Plaintiff. This can be remedied by compelling Plaintiff to simply identify any such ownership interest.

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Plaintiff's response to this Interrogatory is evasive and incomplete because it fails to respond to the question posed. Plaintiff states that "VFD is a California sub S corporation, owned 100% by Vera F. Dolan." *(SS 7:15-21)*. However, the question asks Plaintiff to provide information regarding entities other than VFD. Plaintiff has made no attempt to provide this information. Plaintiff should now be compelled to provide the requested information. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's objections to this Interrogatory should be overruled because they are baseless. First, Plaintiff has responded by objecting as overbroad and unduly burdensome. The request is not overbroad as any property interest held by Plaintiff is relevant to this litigation. In addition, "to support an objection based upon burdensomeness[,] the objecting party must particularize the basis for the objections as generalized assertions are inadequate." Nagele v. Electronic Data Systems Corp., 193 F.R.D. 94, 109 (W.D.N.Y. 2000). Plaintiff has not done so.

Second, Plaintiff objects that this Interrogatory is not calculated to lead to the discovery of admissible evidence. However, as stated above, the presence or absence of Plaintiff's ownership rights in other entities may lead to evidence supporting or refuting Plaintiff's claims that she holds a property interest in the MedDiag system.

Third, Plaintiff's objection that this request seeks to discover Plaintiff's confidential financial affairs pursuant to Cobb v. Superior Court, 99 Cal. App. 3d 543, 550 (1979) and Valley Bank of Nevada v. Superior Court, 15 Cal. 3d 652, 658 (1975) is without merit. These cases do not support Plaintiff's argument that the discovery Defendants seek is not permissible. The Cobb case limits discovery only in certain situations when a party's net worth is not discoverable. 21st Services does not seek any information regarding Plaintiff's net worth. The Valley Bank case stands for the proposition that banks should provide notice to account holders prior to produce financial records pursuant to a subpoena. This case does not support Plaintiff's contention that this Interrogatory should not be fully and completely answered.

7. Interrogatory No. 15 Regarding Claims Of Royalties/Payments After August 2001 Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 15 seeks all facts supporting any claims Plaintiff may have that it or Vera Dolan is entitled to payment for services or royalties from 21st Services subsequent to August 2001. *(SS 7:22-24)*. The contract between 21st Services and Plaintiff terminated in August of 2001. 21st Services is entitled to the requested information because it directly relates to Plaintiff's claim that it holds a continuing proprietary interest in the MedDiag program. It is also related to Plaintiff's claim that it is entitled to damages in this case corresponding to each use of the program subsequent to the termination of its contractual relationship with 21st Services. If Plaintiff is claiming that it is entitled to continuing payments or royalties, it should so state and simply provide the bases for the continuing interest. This is information within Plaintiff's control. Defendant will face an unjust burden if it forced to independently obtaining this information because it can only speculate as to the particular facts Plaintiff believes support its continuing right to payments/royalties. This can be easily remedied by compelling Plaintiff to state the facts that support any continuing rights to payments. It is appropriate for Defendant to obtain these facts at this time because the information requested is at the core of Plaintiff's allegations in this case and is readily available to Plaintiff. Defendants also require this information so that they may access Plaintiff's claim for damages and identify potential sources of discoverable information

Plaintiff's supplemental response is evasive and incomplete because it contains no facts to support a claim for royalties or payments subsequent to August 2001. *(SS 7:25-26)*. Plaintiff's reference to its responses to Interrogatories No. 7, 9, 10 and 11 is improper under Scaife v. Boenne, 191 F.R.D. 590, 594 (2000) because an answer to an interrogatory must be complete in and of itself. Plaintiff should be compelled to amend its response to include the requested facts or, alternatively, state that Plaintiff is not claiming payments or royalties subsequent to August 2001. Finally, if Plaintiff does not currently possess the information required to provide a response, Plaintiff should be compelled to amend the response to specifically indicate this. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

8. Interrogatory No. 16 Regarding Plaintiff's Communications With Coventry First Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 16 seeks information regarding any conversation Vera Dolan has had with Alan Buerger or any other agent of Coventry First concerning 21st Services within the last 6 months. *(SS 8:1-4)*. 21st Services is entitled to the requested information because the conversations at issue are directly relevant to Plaintiff's cause of action for Fraud. As part of this cause of action, Plaintiff claims that agents of Coventry First indicated to her that Coventry was displeased with the information 21st Services was providing to the viatical settlement industry. Plaintiff claims that Paul Kirkman of 21st Services then fraudulently communicated that this was not true. Therefore, Plaintiff's communications with Coventry are clearly relevant and discoverable. Further, Plaintiff asserts that its reputation has been damaged because of the alleged inaccuracy of the MedDiag system and has identified Coventry as the prime witness in support of such claims. As such, Plaintiff's conversations with Alan Buerger and/or any other officer of Coventry are relevant and properly discoverable.

Further, 21st Services requires the information requested because it is clearly in the possession of Plaintiff. In the alternative, 21st Services will face an undue burden in attempting to obtain information from a third party, Coventry First, regarding Ms. Dolan's conversations with agents of Coventry. It is an appropriate time for Defendant to obtain the requested information because it is clearly available to Plaintiff and Defendants require information concerning the cause of action for Fraud so that they may locate additional sources of discoverable information.

Plaintiff's supplemental response that it does not possess sufficient information to respond to this request is evasive and incomplete and is absurd. *(SS 8:5-11)*. As the President of VFD, Ms. Dolan most certainly knows one way or another whether any conversations with Coventry took place. As such, Plaintiff should be compelled to identify each conversation Plaintiff has had with Alan Buerger, Coventry, or its agents within the indicated time period and detail the nature of the conversations. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff's objections in response to this Interrogatory should be overruled because they are baseless. Plaintiff objects on grounds that the Interrogatory is harassing, overly broad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. First, the Interrogatory is not overly broad because it is limited to the last six months and to conversations with agents of Coventry First. This is not overly broad given Plaintiff's claims of Fraud.

Second, the Interrogatory is relevant and is likely to lead to the discovery of admissible evidence. As discussed, this request may lead to admissible evidence regarding Plaintiff's claims of Fraud. These claims are based, in part, on conversations Plaintiffs have alleged occurred between it and agents of Coventry.

Third, this Interrogatory is not harassing. It is Plaintiff who claims that Defendant committed by fraud. Plaintiff has placed Vera Dolan's conversations with Coventry at issue in basing the allegations of fraud on those conversations. Therefore, Defendants request for information regarding these conversations cannot be characterized as harassing.

9. Interrogatory 17 Regarding Vera Dolan's Conversations With Third Parties Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Interrogatory No. 17 seeks information regarding conversations Vera Dolan has had with third parties relating to 21st Services and the allegations contained within Plaintiff's Complaint. *(SS 8:12-17)*. 21st Services is entitled to the requested information because the conversations at issue are directly relevant to Plaintiff's cause of action for Fraud. As part of this cause of action, Plaintiff is claiming that 21st Services fraudulently represented to VFD the quality and accuracy of the viatical settlement calculations provided by the MedDiag system. Plaintiff claims that third parties indicated to her that Coventry was displeased with the information 21st Services was providing to the viatical settlement industry. Plaintiff claims that Paul Kirkman of 21st Services then fraudulently communicated that this was not true. Any conversations Vera Dolan has had with third parties regarding 21st Services and the MedDiag system are directly relevant to these claims. Further, Plaintiff asserts that its reputation has been damaged because of the MedDiag system and as such, Ms. Dolan's conversations with third-parties, including those at industry trade shows, regarding this system are relevant and properly discoverable.

Further, 21st Services requires the information requested because it is clearly in the possession of Plaintiff. In the alternative, 21st Services will face undue burden in attempting to obtain information from third parties regarding Ms. Dolan's conversations with them. It is an appropriate time for Defendant to obtain the requested information because it is clearly available to Plaintiff and Defendants require information concerning the cause of action for Fraud so that they may locate additional sources of discoverable information.

As set forth more specifically in the previous section, Plaintiff's supplemental response that it does not possess sufficient information to respond to this request is absurd. *(SS 8:18-23)*. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to undertaking of further discovery including depositions.

Additionally, Plaintiff's objections are also improper for the same reasons set forth during the discussion regarding Interrogatory No. 16.

10. Request For Production No. 11 Seeking Documents Regarding Plaintiff's Trade Secret Claim Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Request for Production No. 11 seeks all documents supporting Plaintiff's claim that it holds a trade secret in the MedDiag computer system as well as other information related to the alleged trade secret. *(SS 8:25-9:1)*. 21st Services is entitled to these documents because they directly relate to Plaintiff's claim that 21st Services' misappropriated a trade secret from Plaintiff. 21st Services is clearly entitled to the requested documents pursuant to Rule 26(b)(1). Defendants require the requested documents at this time so that they may further assess Plaintiff's claim that the property interest it holds in the MedDiag system can be characterized as a trade secret or some other type of intellectual property interest. Defendants will require this information prior to engaging in further discovery such as depositions so that the depositions can be taken in an efficient and focused manner. Additionally, if the documents are produced at or subsequent to the depositions, the depositions would likely have to be re-noticed such that the documents can be reviewed or authenticated.

Plaintiff's response is evasive and incomplete under Rule 37(a)(3) because it is an improper incorporation by reference of Plaintiff's Initial Disclosures. *(SS 9:2-13.)* The response inappropriately forces 21st Services to determine what documents contained within the Initial Disclosures are and are not responsive to this request. Such a boilerplate response is patently improper since Rule 34(b) requires Plaintiff to "organize and label" all documents responsive to this request. Coupled with Plaintiff's deficient response to Interrogatory No. 10, it is clear that Plaintiff is withholding all information concerning the substance of the Misappropriation of Trade Secrets claims. If such a claim is to be maintained, Defendants are entitled to know which documents are being relied upon to prove these allegations. Accordingly, Plaintiff should be compelled to produce those documents that support Plaintiff's trade secret allegations or provide a further response that confirms no such documents exist. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to the undertaking of further discovery including depositions.

Plaintiff has also responded with several baseless general and specific objections. First, Plaintiff objects that the request is vague and unintelligible but does not specify the grounds for these objections as required by Pulsecard, Inc. v. Discover Card Services, Inc., 168 F.R.D. 295, 310 (D. Kansas 1996).

Second, Plaintiff objects that the documents requested are equally available to Defendants. This is an improper objection because Defendants are not aware of, and Plaintiff has not disclosed, any fact that supports Plaintiff allegations that Defendants have misappropriated a trade secret. Therefore, Plaintiff must identify documents that exist, if any, that Plaintiff believes contains facts supporting the alleged trade secret. Defendant should not be required to speculate as to what documents contain this information.

Third, Plaintiff's general, blanket objections of privilege are improper pursuant to the Eureka and EEOC cases discussed above with respect to Plaintiff's response to Interrogatory No. 8.

11. Request for Production No. 12 Seeking Documents Regarding Plaintiff's Work For Defendants Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Request for Production No. 12 seeks all documents gathered by Plaintiff in performing work for Defendants. *(SS 9:14-16)*. 21st Services is entitled to these documents under Rule 26(b)(1) because each of Plaintiff's claims in this action relate to her work for Defendants. These documents are in the possession of Plaintiff and may include documents created by Plaintiff that are not in the possession of Defendants. These documents are likely to contain relevant information regarding Plaintiff's claims including the causes of action for Fraud and Misappropriation of a Trade Secret. Defendants require the requested documents at this time so that they may further assess Plaintiff's core claims in this case. Defendants will require this information prior to engaging in further discovery such as depositions so that the depositions can be taken in an efficient and focused manner. Additionally, if the documents are produced at or subsequent to the depositions, the depositions would likely have to be re-noticed such that the documents can be reviewed or authenticated.

Plaintiff's supplemental response contains no reference to any documents. *(SS 9:17-22)*. Instead, it improperly references its response to Document Request No. 11, which in itself is deficient for the reasons outlined above. The request inherently seeks documents whose identities could only be known by Plaintiff. It is unfair to force Defendants to guess which documents produced in all parties' Initial Disclosures are responsive to this request. Plaintiff should be compelled to identify and produce all documents Plaintiff gathered in its work for Defendants and serve a supplemental response identifying this information. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to undertaking of further discovery including depositions.

Plaintiff's general and specific objections to this request are frivolous and should be overruled. First, the specific work product objection is absurd because the request seeks only those documents created while Plaintiff performed work for Defendant, which, by definition, does not include documents created for Plaintiff's attorney.

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Second, the request is not overbroad because it seeks only those documents Plaintiff possesses that relate to its work for Defendants. Plaintiff's work for Defendants is at issue in this litigation. This fact also renders baseless Plaintiff's objection that this request is not reasonably calculated to lead to admissible evidence.

Third, Plaintiff's general, blanket objections of privilege are improper pursuant to the Eureka and EEOC cases as discussed above with respect to Plaintiff's response to Interrogatory No. 8.

12. Request for Production No. 13 Seeks Documents Regarding Plaintiff's Income Seeks Relevant Information And Satisfies The Common-Sense/Proportionality Test

Request No. 13 seeks documents sufficient to identify Plaintiff's income between 1996 and the present. *(SS 9:23-24)*. 21st Services is entitled to these documents because they directly relate to Plaintiff's claims of lost earnings, profits and/or royalties. Plaintiff also asserts that it has been unable to work in the insurance industry because of Defendants' alleged actions. In order to claim lost profits or earnings, Plaintiff will be required to demonstrate its income for a substantial period of time prior to any event alleged to have caused the lost earnings/profit. Plaintiff will also be required to show that its earnings decreased subsequent to the alleged event. Plaintiff clearly is in possession of and can easily obtain documents related to Plaintiff's income. However, Defendant cannot obtain such documents without substantial and unnecessary burden and may not be able to obtain any documents. Thus, a refusal to answer this Interrogatory is obstructive because it completely blocks Defendants' ability to conduct discovery and evaluate Plaintiff's economic damages claim. In this instance, Defendants require documents to confirm whether a lost earnings claim truly exists.

Defendants require the requested documents at this time so that they may further assess Plaintiff's core claims. Defendants will require this information prior to engaging in further discovery such as depositions so that the depositions can be taken in an efficient and focused manner. Additionally, if the documents are produced at or subsequent to the depositions, the depositions would likely have to be re-noticed such that the documents can be reviewed or authenticated.

Plaintiff's response to this Request is evasive and incomplete because it responds by indicating that Defendants should be in possession of the relevant documents and that Plaintiff is claiming damages based on a contractual obligation between Plaintiff and Defendants. *(SS 9:25-10:5).* However, Plaintiff does not indicate that it is only seeking damages based on the alleged contracts. Therefore, Plaintiff should be required to provide information regarding any lost earnings or profit caused as a result of any alleged damage including, but not limited to, damage to Plaintiff's reputation or Plaintiff's inability to work in the insurance industry. Accordingly, Plaintiff should be compelled to provide a supplemental response which includes supporting documents or confirms that the lost income claim has been withdrawn. The facts dictate that this relevant discovery is cost effective, satisfies the commonsense proportionality test, and should be produced prior to undertaking of further discovery including depositions.

Further, Plaintiff's objections to this Request should be overruled. First, Plaintiff's objection based on a right to privacy is baseless because the Cobb case is limited to discovery of a party's net worth and does not allow Plaintiff to refuse to answer this discovery. This Request does not seek information regarding Plaintiff's net worth.

Second, the request is not overbroad because it seeks only those documents Plaintiff possesses dating back to 1996. This time period is directly relevant to Plaintiff's claims for lost earnings. Plaintiff must present evidence of its earnings for a substantial period of time prior to any event that later caused Plaintiff to lose earnings or profits. This fact also renders baseless Plaintiff's objection that this request is not reasonably calculated to lead to admissible evidence.

Third, Plaintiff's general, blanket objections of privilege are improper pursuant to the Eureka and EEOC cases discussed above with respect to Plaintiff's response to Request No. 8.

V. CONCLUSION

Based on the foregoing, Defendant 21st Services respectfully requests that Plaintiff VFD Consulting, Inc. be compelled to supplement its responses to the specified Interrogatories and

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Requests for Production. If Plaintiff fails to do so, Plaintiff should be precluded from offering evidence concerning those subjects at trial.

DATED: April 27, 2005

Respectfully submitted,

/s/ Rohit A. Sabnis

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